

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

FRANK SAGER	§	
	§	
V.	§	CIVIL ACTION NO. G-11-140
	§	
ALLSTATE INSURANCE COMPANY	§	

OPINION AND ORDER

Before the Court is the Motion for Summary Judgment of Defendant, Allstate Insurance Company (Allstate). The deadline for a response from Plaintiff, Frank Sager (Sager), has passed and counsel for Sager has informed the Court that under the factual circumstances of this case no response will be filed. The Motion is, therefore, ripe for determination.

Because summary judgment may not be granted by default alone, Eversley v. MBank of Dallas, 843 F.2d 172, 174 (5th Cir. 1988), the Court must determine whether Allstate has made a *prima facie* showing of its entitlement to summary judgment based upon its undisputed evidence. C.F. Dahlberg & Co. v. Chevron USA, Inc., 836 F.2d 915, 919 (5th Cir. 1988) In the opinion of this Court, Allstate's evidence has shown that summary judgment is appropriate.

On March 28, 2011, Sager filed suit against Allstate, a WYO carrier, alleging breach of contract for Allstate's failure to cover foundation damage to his home following Hurricane Ike. Allstate paid two timely Proofs of Loss, but Sager never submitted a timely

Proof of Loss for the foundation damage the basis of this lawsuit. Since the failure to timely submit a sworn Proof of Loss bars recovery, Gowland v. Aetna, 143 F.3d 951, 954 (5th Cir. 1998), Allstate is entitled to summary judgment.

The Court sees no need to address Allstate's other grounds for summary judgment.

It is, therefore, **ORDERED** that the Motion for Summary Judgment (Instrument no. 26) of Defendant Allstate Insurance Company, is **GRANTED** and the Complaint of Plaintiff, Frank Sager, is **DISMISSED**.

DONE at Galveston, Texas, this 10th day of June, 2013.



John R. Froeschner
United States Magistrate Judge